

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

552B0821

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB219** - 2/11/98

Introduced by: Senators Dunn (Jim), Drake, and Hutmacher and Representative Brooks

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to vested water rights  
2 claims.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 46-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 In the issuance of permits to appropriate water for nonirrigation uses or the adjudication of  
7 rights, including vested rights, to the use of water for such purposes, the amount allowed may  
8 not exceed the maximum rate applied to beneficial use by the appropriator.

9 Section 2. That § 46-5-49 be amended to read as follows:

10 46-5-49. Any person claiming to be owner of a vested right to appropriate water from any  
11 surface water source for beneficial use other than domestic use as defined in subdivision  
12 46-1-6(7), may file with the chief engineer a vested right claim in a form and manner prescribed  
13 by the board of water management. The claim shall set forth the amount of water used, when the  
14 water was used, purpose of use, the location of the diversion works and, if the water has been  
15 used for irrigation purposes, the legal description of the land upon which the water has been

1 used, and the name of the owner of the land. The claim shall be signed under oath and shall be  
2 either from the claimant's own personal knowledge or on information and belief. The hearing on  
3 the vested right claim shall be conducted pursuant to the procedures contained in chapter 46-2A.  
4 If, in the course of an investigation conducted by the chief engineer pursuant to subdivision  
5 46-2-17(1), a person asserts the existence of a vested water right, the chief engineer may require  
6 that person to file a vested right claim within ninety days pursuant to this section. Failure to file  
7 in the absence of such a requirement by the chief engineer does not constitute a waiver of a  
8 vested water right. The capacity of any diversion works of a vested water right, which have  
9 either been in continuous operation from the date of vesting of the right or constructed within  
10 a reasonable time thereafter, shall be considered by the board as evidence of the amount of water  
11 ordinarily and beneficially used and needed under the vested right. The amount of water  
12 ordinarily used includes the amount necessary to satisfy the beneficial water uses of the  
13 appropriator under various climatic and peak demand conditions. The capacity of diversion  
14 works may be considered for vested water claims commenced, but not finally determined, before  
15 January 1, 1998, and any future claims. The board may also consider the capacity of diversion  
16 works if conducting a hearing to review the amount of water ordinarily and beneficially used by  
17 an existing vested water right validated pursuant to Title 46.

18 Section 3. That § 46-6-2 be amended to read as follows:

19 46-6-2. Any person claiming to be the owner of a vested right to appropriate water from any  
20 underground source for beneficial use other than for domestic use as defined by subdivision  
21 46-1-6(7) may file a vested right claim with the chief engineer in a form and manner prescribed  
22 by the Board of Water Management. The claim shall set forth the amount of water used, when  
23 the water was used, purpose of use, the location of the well and, if the water has been used for  
24 irrigation purposes, the legal description of the land upon which the water has been used and the  
25 name of the owner of the land. The claim shall be signed under oath, and shall be either from the

1 claimant's own personal knowledge or on information and belief. The hearing on the vested right  
2 claim shall be conducted pursuant to the procedures contained in chapter 46-2A. If, in the course  
3 of an investigation conducted by the chief engineer pursuant to subdivision 46-2-17(1), a person  
4 asserts the existence of a vested water right, the chief engineer may require that person to file  
5 a vested right claim within ninety days pursuant to this section. Failure to file in the absence of  
6 such a requirement by the chief engineer does not constitute a waiver of a vested water right.  
7 The capacity of any diversion works of a vested right, which have either been in continuous  
8 operation from the date of the vesting of the right or constructed within a reasonable time  
9 thereafter, shall be considered by the board as evidence of the amount of water ordinarily and  
10 beneficially used and needed under the vested right. The amount of water ordinarily used  
11 includes the amount necessary to satisfy the beneficial water uses of the appropriator under  
12 various climatic and peak demand conditions. The capacity of diversion works may be  
13 considered for vested water claims commenced, but not finally determined, before January 1,  
14 1998, and any future claims. The board may also consider the capacity of diversion works if  
15 conducting a hearing to review the amount of water ordinarily and beneficially used by an  
16 existing vested water right validated pursuant to Title 46.

1    **BILL HISTORY**

2    1/26/98 First read in Senate and referred to Agriculture and Natural Resources. S.J. 199

3    2/5/98 Scheduled for Committee hearing on this date.

4    2/10/98 Scheduled for Committee hearing on this date.

5    2/10/98 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 6, NAYS 3.

6    S.J. 411